

THE ROYAL POWER AND THE CORTES IN PORTUGAL

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AND THE  
CORTES IN PORTUGAL

BY

EDGAR PRESTAGE, M.A., D.LITT. OXON.

*Camoens Professor in the University of London, Kings College.*

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WATFORD

1927



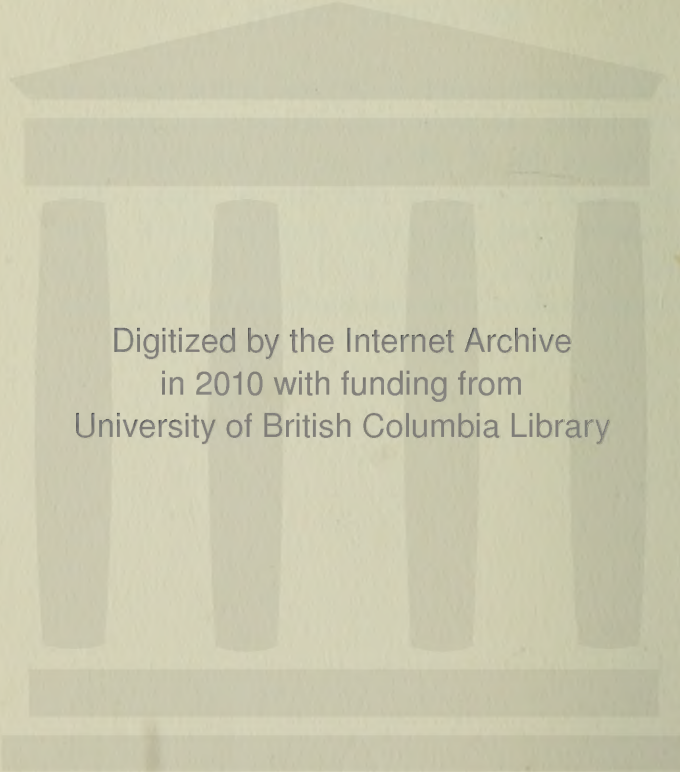
TO MY FRIEND AND COLLEAGUE,  
PROFESSOR F. J. C. HEARNshaw.

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## PREFATORY NOTE

PART of this monograph is derived from a course of lectures under the same title delivered in 1922-23 by Professor M. P. Merêa at the University of Coimbra and printed in that city in 1923. The rest comes from the other sources cited. The subject has not, so far as I am aware, been previously dealt with in any publication in English.



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# The Royal Power and the Cortes in Portugal

## (a) THE KING

The Visigothic monarchy in the Peninsula was at first elective, but it gradually adopted the hereditary principle, and under the influence of Roman law developed into a system in which the King, possessing supreme authority for the common good, disposed of all the prerogatives necessary for his mission. This absolutism was strengthened under the Moors, from whom came the ceremony of kissing the King's hand, and the function, considered inherent in royalty, of dispensing favours to all classes with Oriental profusion.

In view of such antecedents, the nature of kingship in the Neo-gothic lands could not be the same as in countries where feudal institutions prevailed. The state might almost be considered the private property of the monarch, because he named his successor, sometimes divided it among his children and disposed of one or more of his attributes to private individuals, temporarily or *in perpetuum*. Some, however, of the conditions prevailing in lands north of the Pyrenees were reproduced in the

Peninsula, though feudalism never took root there. While the King's authority extended to all his subjects and everyone owed him obedience, there were men with more positive duties than the generality, derived from an oath of fealty, whether accompanied or not by a grant of land. The direct personal character of the tie is shown by the recognition of the vassal's right to abandon the service of the King when injured by him. These characteristics became intensified when close relations were established between the Peninsular realms and feudal countries, especially France, and notwithstanding the primacy of the monarch, other forces arose which limited his political action.

The nobles fought for the maintenance of their rights and immunities, founded largely on tradition from Visigothic times ; the Church endeavoured to preserve its independence of civil jurisdiction, and vassalage seriously threatened the central authority, because the royal vassals, instead of using their tenants to assist the King, not rarely employed them to oppose him. The country was dotted over with seigniorial estates, the owners of which, by virtue of royal concessions or otherwise, enjoyed powers similar to those of the monarch, such as the right to grant charters, to collect taxes and to administer justice. These lordships contained the germs of independence, and some Counts actually succeeded in becoming heads of new states, as in the case of Henry of Burgundy, father of the first King of Portugal. At the same time the municipalities, a relic of Roman times, formed another kind of seigniorship of a collective nature, with a like autonomy.

From this it will be seen that the Neo-gothic monarchies resembled in many ways other medieval states. The resemblance, however, never became complete, because in the last instance the monarchs were able to maintain their supremacy in jurisdiction, then the most typical attribute of sovereignty, and they took means to make it reach every corner of the country ; for instance in the Council of Leon, in 1020, it was decreed that all cities should have judges of royal nomination to hear suits by whomsoever brought. Moreover gifts of crown lands did not become the perpetual property of the feudatory and his descendants, for by their very nature they were, in theory at least, incapable of being dismembered. In Portugal, from the time of Afonso II, such grants had to be confirmed at the commencement of a new reign, and this King and his successors sent commissioners over the country to examine the titles by which lands were held, with a view of re-incorporating them in the national domain. Other proofs of the non-existence of feudalism in Portugal are that the lands of nobles were exempt from military service and monetary contributions, and that the right of coinage never belonged to even the greatest lords. Thus, on the whole, they resembled temporary delegates of the King entrusted by him with the government of a district, and the fact that many of them were at the same time seigneurs and royal functionaries, diminished in fact their independence.

The reasons why feudalism never took root in Portugal were, that the long struggle with the Moors made unity of direction necessary and conferred *prestige* on the Kings who led their host

in battle ; that the Neo-gothic states were small ; that the clergy, however much they might oppose royal authority, had an interest in its maintenance and that the municipalities guaranteed popular rights and formed a barrier against the ambition of the nobles.

From the time of the Visigoths it was common to consider the King as the representative of God, from whom he received his authority. This doctrine, afterwards enshrined in the *Siete Partidas*, was based on two Biblical texts : " By Me Kings reign " says the *Book of Proverbs*, VIII, 15, and St. Paul in his *Epistle to the Romans* XIII, 1, declares that " There is no power save from God." Though the immunities of each class and local custom formed a restriction on the King, certain prerogatives were recognised as belonging to him, to wit, the supreme administration of justice, the right to alter the value of money and to exact *fossadeira*, the tribute payable by those who failed to take part in the annual excursions into Moorish territory to ravage it, or reap the fruits of the soil.

Later on in the Middle Ages a modified view of the royal authority prevailed and it is set forth in the *Speculum Regum* of the Franciscan, Alvaro Paes, Bishop of Silves, and in the *Tratado da Virtuosa Bemfeitoria* of the Infant D. Pedro, son of King John I, written between 1418 and 1433. According to the latter, all power in the abstract comes from God, in the concrete however He has granted it to Kings, with the consent of the people, who have made an agreement with their rulers called *pactum subjectionis*. Sovereignty is not an absolute right to be exercised by the King for his own advantage,

ERRATA :

Page 10—line 11 *for* Biblical *read* Biblical.

Page 31—line 11 *for* would *read* could.





but an office created and maintained for the general well-being : “ *regnum non est propter regem, sed rex propter regnum.*” The King is regarded as a father, or tutor, whose powers ought to be exercised for the benefit of his pupil and he is thus distinguished from the tyrant, who seeks his own good at the expense of his subjects. The chief function of a King is to administer justice, to reward the good and punish the bad, and he must respect the liberties of the people, who in their turn are bound to pay him tribute and supply him with the means to fulfil his mission. He ought to have a Council to assist him and the three classes or estates should be represented in it, so that nothing may be done to their prejudice, or in breach of their privileges. This in the main is the scholastic doctrine, which was afterwards developed by the great Spanish theologians of the 16th and 17th centuries, such as Francisco Suarez, the celebrated Jesuit professor of Coimbra University. Pedro accepts the dictum of St. Paul : “ he who resists the Prince, resists the ordinance of God,” but in later times the doctrine prevailed that if the monarch behaved tyrannically, the people were entitled to resume their initial authority and depose him after a trial ; this had been done by the Pope in the case of King Sancho II at the Council of Lyons in 1245, an event which showed the power of the clergy, then at its height.

We find popular support for this latter view in some ballads of the *Romanceiro* ; the obedience of the people is made to depend on the conduct of the King, the right of rebellion is proclaimed and some sympathy is displayed for the idea of tyrannicide.

Nevertheless in the efforts made by the monarchs

to strengthen their authority and unify the state, they generally had the support of the people, whose interests lay in weakening the privileged classes. The masses felt that peace and justice could be secured only by the Crown, but by assisting its aggrandisement they went far to establish absolutism as a system ; in the Cortes of 1472-3 they told the King that it was his duty to use his " absolute power " to repair the injuries done them and not to wait for their complaints. A town considered it a calamity to be given to a magnate, when civil and criminal jurisdiction went with the grant ; on the other hand it was a privilege to be inalienable by the Crown ; the authorities of Loulé in 1484 asked King John II to be their " Messiah " and deliver them from subjection to the Braganza family.

At the end of the 13th century the decay of the Papal power, which had secured Portuguese independence as against Castile and Leon, removed the chief support the clergy had enjoyed against the Kings ; the latter ceased to require the aid of the people in differences with the Church and began to consider their rights and immunities as inconsistent with the extension of their own authority and in the 14th century restricted them. They were able to do so, because, as we have seen, they could usually count on the help of the Third Estate, while the latter could not expect either nobles or clergy to join it in opposing the sovereign.

The unquestioned supremacy of the royal power, practically completed by King John II at the end of the 15th century, was in part a political work, but the principles of Roman law had their share in it, and this influence was all the greater when the

chief posts in the administration were filled by lawyers. The *Corpus juris civilis* contained the model of a monarchy in which the idea of the state was fully developed with all its consequences, and where absolutism secured order and justice. Persuaded that the Kings should copy it as the best means of combating the violence of a semi-feudal society, the lawyers endeavoured to gain for their masters the authority enjoyed by the Emperors and continually cited texts from Roman law. Such formulas as "What pleases the Prince has the force of law," and "the Prince is exempt from the law," became axioms, and though not always carried to their logical conclusion, they assisted the absolutist movement by showing that the fount of positive law resided in the monarch\*. The popular origin of kingly power, which still lived in tradition, was harmonised with absolutist principles by the commentators, who argued that by the *Lex Regia* the nation had transferred its right to the Prince, while the idea that all power came from God was used to strengthen the same authority; in the *Ordinações Afonsinas* (1446) we read: "The King has his rule from the hand of God and as His vicar and lieutenant is free from all human law." Side by side with quotations from the Digest and Code of Justinian, the plea of public interest was invoked and the King was presented as its representative and defender. The first King, Afonso Henriques, had two Roman lawyers as his chancellors, and

\*Cf Justinian. *Institutes* Lib 1. Tit 6.

"*Quod principi placuit legis habet vigorem ; cum lege regia quae de ejus imperio lata est, populus ei et in eum omne imperium et potestatem concedat.*"

Dinis, when revoking in 1283 the grants he had made at the beginning of his reign, alleged the consent of his barons, councillors and "many lawyers"; in 1385 the procurators of Lisbon called the last one of the four estates of the realm. Of humble birth, the self-interest of these men was bound up with the growth of royal power, for the King was their employer and by him only could they rise in position and wealth. Master Julian guided the first two monarchs in their conflicts with the bishops, and Dr. John das Regras helped John I in his duel with the nobles. By his eloquence and the production of documents of doubtful validity, he secured the King's election to the throne at the Cortes of 1385; he assisted him in administration and reaped a rich reward. The lawyers were the principal architects of that absolute system which was sapped by the so-called "philosophers" in the 18th century.

The growth of royal authority in the Middle Ages appears in various ways, in the imposition of general taxes, in the limitation of baronial rights, in the pre-dominance of the civil power over the ecclesiastical, in the superintendence of local administration and in the strengthening of the legislative function.

At first the administration of justice was the prerogative to which the Kings attached most importance; as early as 1211 Afonso II declared that the supreme judicial *magisterium* was his and that the judges were merely his delegates. In 1317 Dinis proclaimed that by the law and custom of the realm the right of judgment in the last instance was understood as reserved to the Crown in all royal

grants in recognition of its over-lordship, and the people defended this doctrine in the Cortes of Leiria in 1372. It is true that monarchs sometimes renounced this right in their grants, but the principle was preserved, as we see in the case of Fernando. This King, though very ready to sacrifice his prerogative, established in Cortes that no one could lawfully oppose the royal right to hear appeals, which was confirmed afterwards by the *Ordinações Afonsinas*, as also that the right of *correição* was inherent to the kingly power and the *Corregidores* were ordered to visit every place twice a year, to whomsoever it belonged.

Later on the legislative power became the chief attribute of royal authority. The notion of what made up a law was far from clear, and not only royal dispositions of a general character, but all diplomas by which the Prince regulated the actions of his subjects, were considered legislative acts. A distinction was however made between those whose form indicated that the monarch intended to give the force of general law to his will and to create a new right, and those destined for another purpose, such as a decree with the object of interpreting, amplifying or restricting a former law, or of dealing with a certain person or special subject ; but even in this latter case the diploma had the force of a general law, when the King showed that such was his purpose.

The early Portuguese Kings based their ordinances on their own good pleasure and on the consent of the magnates, but in the 14th century this style was substituted by the will of the monarch, either with or without the consent of their Council, and in

the middle of the same century documents attribute to the King unlimited power. Some of these emanating from Pedro I speak of "our free will and certain knowledge"; but this changes in the reign of his son King Fernando to "our knowledge and absolute power." The last form becomes increasingly frequent and it is used by John I immediately after his election, as though he were the legitimate heir of an autocratic crown, instead of a bastard with no right to the succession. The formula did not yet correspond to a fact, but to a theory which was gradually growing into one.

The Cortes of 1459 in delineating the model of a perfect ruler, went so far as to call him "God on earth," but the phrase must be considered rhetorical, since they proceeded to criticise Afonso V for his unreasonable expenditure on Court and household. Their use of the title "the King our Lord" is first met with in 1475, while in the 16th century genuflexion becomes the ordinary posture of a subject before his ruler and the latter is addressed as "Majesty," a title hitherto reserved for God.

The nation for long continued to claim as against the King certain rights, though it did so as a rule in respectful terms and according to the force it disposed of. The conviction was general that he was bound to observe its laws and customs, liberties and privileges, whether founded on grants or on long possession; thus when the oath was taken to the King's eldest son as heir to the Crown, it was the practice for him to swear to maintain them, and a new King on his acclamation did the same; these ceremonies were vestiges of the elective principle inherited from the Visigoths and by them from their

German ancestors, the term acclamation being derived from the shouts which greeted the new monarch.

The very institution of the Cortes was the visible proof of the idea that the relations of King and people rested on a pact. The classes, in the petitions they made in Cortes, constantly invoked their laws and privileges, and the Kings recognised them in principle, but declared that they reserved the right to infringe them for a just cause. Thus in the Cortes of 1371 the people, having complained that municipal magistrates had been substituted by judges appointed by the Crown, King Fernando replied that he had made the change for their better government and would stand by it. Again when in the Cortes of 1475 the municipalities asked that their privileges, laws and customs, which had been approved by the Crown, might be maintained and all royal orders and judicial decisions to the contrary cancelled, the King replied that this general request was ill-made, but that any special injury would be repaired.

Following the canonists, the juriconsults of the 17th century taught that the King could abolish customs and privileges and dispense from laws for a just cause, unless there had been a contract between him and his subjects and the latter could invoke acquired rights. The growth of the royal power was however always accompanied by that of the idea of the state, according to which the Prince was considered, not as an absolute owner of the right to govern, but as a representative of the general interest. Hence followed the doctrine that Crown property must be used to satisfy national

requirements ; the King was merely an administrator, and as we have said before, grants to individuals needed confirmation at the beginning of a new reign. This explains the *Lei Mental* promulgated by King Duarte in 1434 and so-called because it was supposed to have been in the mind of King John I ; by it lands conferred on private persons could only pass to their direct descendants, on failure of which they reverted to the Crown. The monarch profited directly and the nation indirectly, at the expense of the upper class.

The idea of the subjection of the King to the law was recognised and constantly expressed by publicists ; “ he who makes laws owes them obedience,” said Antonio Ferreira, the poet, in his letter to King Sebastian, but as there was no division of powers, all legislative, judicial and administrative authority being vested in the King, the sovereignty of the law apart from him had no guarantee. It was because they recognised the disadvantage of the concentration of power in one man, that the people on various occasions pressed that the Cortes should be periodically summoned, and that laws made in them should not be revoked by the monarch at his pleasure, but this claim was never admitted so as to become a principle of public law. The uncertainty as to the national privileges, the right of dispensation and the application of the criterion of the “ reason of state,” were grave defects and contained the germs of pure absolutism, though they met with many correctives in fact. But if the King abused his dispensing power and the nobles oppressed the people, the municipalities had no greater respect for the law ; in the reign of King Afonso V they



claimed to obey those only which suited each, while desiring to bind the monarch and deprive him of the right of modifying them. In view of this strange demand, Afonso had to declare in the Cortes of 1475 that the resolutions of these assemblies, when sanctioned by him, must be put into force all over the realm.

The election of John I favoured the idea that the King derived his power from the people, but a reaction set in during the last part of the 15th century and the 16th was one of veiled despotism. The more liberal medieval theory came again into favour, however, and obtained recognition in 1640, after sixty years of Spanish rule, when the defenders of the Restoration had to justify by natural and public law the deposition of King Philip III. They sought to strengthen their case by invoking the apocryphal acts of the Cortes of Lamego, published in 1632 by Antonio Brandão, which they held to be the fundamental law of the monarchy, and they contended that the King could not alter its traditional laws and privileges, even though these might be unwritten. The theory of the popular origin of power found a learned and strenuous supporter in Dr. Francisco Vaz de Gouveia, author of the *Justa Acclamação de D. João IV*, which was printed at the cost of the three Estates. Citing the *Confessions* of St. Augustine, he taught that Kings were appointed as the result of a pact and that power was conferred upon them on condition that they ruled their subjects justly. It is interesting to note that Pombal, the greatest exponent of despotism and yet the idol of Portuguese Liberals, prohibited the circulation of this book.

In the legislation which followed the resolutions of the Cortes of 1641, the anti-absolutist nature of which impressed foreign thinkers, we find the revival of the old doctrine that before their acclamation Kings must swear to maintain the rights and liberties of the people which their predecessors had granted. This revival however was short lived, for the tendency of other Continental states, which found its ultimate expression in the phrase in which Voltaire summed up the political theory of Louis XIV, "l'etat c'est moi," reached Portugal at the end of the 17th century and produced similar results.

The reign of pure absolutism had begun and there was no longer any place for national or individual rights ; the will of the King was law and resistance to it a crime. He derived his authority directly from God and not through the people ; his duties were purely moral and he was responsible to Him alone for their performance. As a consequence the nation had no control over its destinies, until the Royal House came to an end.

The doctrine of enlightened despotism, generally received in the 18th century, followed from the view that it was the duty of the ruler to promote the general well-being and that the people were incapable of governing themselves.

Until then the monarchy had been a limited one and on the whole the Kings had proved themselves worthy of their privileged position. History records no popular insurrections against them and none of them were murdered by their subjects, as happened to several English monarchs, but, as a Portuguese writer observed lately, we are a violent race !

## (b) THE CORTES

The Cortes had their origin in the old *Curia Regis*, or Royal Council, which existed among the Visigoths. Though in theory under no obligation to consult it, the Kings did not fail to do so when they had to take important resolutions, or where from lack of personal knowledge, they needed its co-operation. Hence we find the *Curia Regis* intervening in royal grants, agreements between the monarch and the magnates, administration of the royal household and Crown property, financial measures, framing of laws, appeals by private persons against the acts of royal officials and conflicts between Church and State. The *Curia* acted in two distinct ways, as an ordinary assembly, or in extraordinary sessions, solemnly convoked, to which a larger number of persons came and in which matters of great moment were discussed. Both were attended by members of the Royal family, Court officials, magnates, lay and ecclesiastical, and certain nobles and prelates in whose lands the meetings were held, or who happened to be at Court. As lawyers grew in political importance, they began to have seats on the council. At extraordinary meetings the nobility was represented, not only by the usual members, but by all the magnates, who were specially summoned and the Church sent its prelates, secular and regular. The Masters of the

three Military Orders also attended and later on procurators of the cities enjoyed the right to be present. The King called the Council and those summoned were bound to attend, because the duty of giving advice was one of the obligations of a vassal. The Council was merely a consultative body, but its existence limited the royal authority.

As thus described, it was an organism suited to the administrative and political conditions of the country in early times, but when these became more complex, it necessarily underwent a transformation and the two forms of the assembly, the ordinary and extraordinary, became separate bodies with different functions. The Royal Council, a continuation of the ordinary sessions of the *Curia Regia*, directed the life of the state in its political, administrative, legislative and judicial spheres, while the Cortes, as the heir of the extraordinary Councils, dealt only with general questions of an economic or legislative nature and with grave political matters.

This evolution was slow and may be said to have begun in the middle of the 13th century. It was marked by the following important events :

1. The presence of representatives of the towns, who certainly attended the Cortes of Leiria in 1254 and probably took part in earlier ones.
2. The convocation of the Cortes to deal with financial and tributary matters. It originated in the practice pursued by monarchs in times of pecuniary stress of renouncing for a number of years, usually seven, the right to debase the coinage, in consideration of the grant of a sum sufficient to meet the needs of the treasury.

Afonso III obtained a capital sum by these means at the Cortes of Leiria, as he could raise money in no other way ; however two centuries later Fernando dealt with the coinage as he thought well, and a hundred years afterwards John II did not think it necessary to consult the people about it.

3. The right of representation thus acquired led members of the Cortes to attend with the object of watching over the administration and of defending their privileges, and the assembly thus came to act as a check on the King.
4. Little by little the idea of the representation of the various classes as a fixed principle arose, and their duty to attend developed into a right to be summoned and to take part in these assemblies.
5. Finally to the privilege of giving advice, their only business at first, was added the right of petition, formulated in articles requesting the removal of abuses, etc., which the King accepted or rejected.

The calling together of the Cortes gradually became an obligation of the monarch, which he recognised in the preamble to the letters containing the resolutions therein arrived at, but the time of convocation remained dependent on his will. The mode of summons was by Royal letter, sent to the municipalities and to all who were entitled to sit in the assembly, stating the reasons for which the Cortes were called, the matters to be discussed and the time and place of meeting. Each of the Three Estates were represented, but this title does not appear until the 15th century ; they consisted of nobles, clergy and procurators of the cities and

towns. The choice of persons and their number depended on the King, but certain individuals by their high position could not be omitted, while the right of cities and towns to send members depended on custom or on their charters. In 1642 ninety-six places were thus represented. When the Cortes were not general, a summons was sent to some towns and not to others.

On receipt of the Royal letter, the towns proceeded to choose their procurators; though adequate information is lacking, the voters seem to have consisted of the most important citizens and members of the *House of Twenty-four* (Delegates of the mechanical arts), in the places where such a body existed. Voting took place at the Town Hall by signed lists and one or two persons of position and wealth were elected, but rarely more.

When the municipal spirit declined, nobles and prelates were often chosen by the Third Estate and in this case they sat among the representatives of the people; sometimes the King wrote to recommend the choice of men in whom he had confidence. After election the members chosen took an oath to attend the Cortes at the time fixed and deal conscientiously with the matters to be there proposed. They were given procurations in the form of an instrument written in a notary's book, which contained their powers; they could not exceed these and their expenses were paid by the municipality.

It was the custom for the Cortes to be opened in state by the monarch; an individual of his choice, either a lawyer or a Bishop, delivered an oration (the King's Speech), and he was answered by one

of the representatives of Lisbon, usually a noble. Members then took the oath and the King retired. Afterwards the Estates separated for their conferences and each communicated with the others by means of ambassadors. *Definitors* were elected on the ground that business could be dispatched more speedily and cheaply by a few, and this committee did the real work of the assembly. The written proposals it submitted to the King had the name of *chapters*; they were called *general* when they affected the whole kingdom and were made in the name of all the municipalities, but there were also *special* ones of the nobility, clergy and inhabitants of each province or diocese. The replies, signed by the sovereign or his secretary, were issued in the form of a letter or provision; together with the *chapters* they constituted legislative acts. Each class fought for its own interests, which were usually opposed to those of the others, especially in the case of the people, whose grievances largely sprang from the privileged position of the other classes, but divergent economic needs often led to discord even among members of the Third Estate.

The Cortes rarely lasted longer than a month, but if necessary the King was requested to continue them, which he generally did; he could, however, dissolve them before the term had lapsed, or dissolve one of the Estates, and in this case the conferences continued in the others.

One of the most important attributes of the Cortes was taxation. In early times the revenue from Crown lands and the usual contributions were sufficient for the current expenses of the administration, and a further general tax was only needed on

an extraordinary occasion, as for instance to meet the cost of a war. In that case a levy was made and the Cortes would be called together to sanction it. The right of the assembly to a voice in the imposition of taxes obtained recognition at the end of the 14th century; in 1372 it refused to grant King Fernando a general excise; in 1387, however, this was voted, but only for a year. Though John I did not always respect the prerogative of the nation, he recognised it; while planning the attack on Ceuta, he declared that he would make no levy, so as not to be obliged to summon the Cortes. When Philip I ascended the throne, he swore among other things not to tax the Portuguese without consulting the Cortes, and the breach of this promise was one of the chief grievances they had against Castilian rule. The ancient privilege was boldly asserted both by public men and by writers in the 17th century\*, and as late as 1668, in the Cortes which deposed Afonso VI, the Estates exercised their right to vote taxes, but it was for the last time.

By customary law the King should have consulted them before declaring war, or making peace, but he did not always do so. They first claimed to be heard on these matters with a view of ending the conflict upon which King Fernando had recklessly embarked with Castile, and he promised to attend to their representations but forgot his promise. In the Cortes of 1385 similar demands were made on John I with more success, for at least once, when he was negotiating for a peace with the neighbouring country, he called the Cortes at Santarem to consult them.

\**Epanaphoras* of D. Francisco Manuel, p. 10 (1st. ed. 1660).



Afonso V however never asked the consent of the people to his African expeditions. It is true that in 1475, when about to invade Castile, he summoned the Cortes to obtain a subsidy, and they gave it without questioning his project. The monarch could require the people to fight, but could not oblige them to contribute money, without their consent, nevertheless this and other foreign wars would have been impossible had the nation been opposed to them.

It was one of the privileges of the Cortes to receive the oath of the sovereign on his accession and to do homage to the heir to the throne, and in addition to their ordinary attributes, they had others on extraordinary occasions, such as the election of a King on the extinction of a dynasty, his deposition, the alteration of fundamental laws, and the appointment of a guardian or regent when the King was a minor.

By their representations they provoked legislation, which, however, was more often carried out in the Council than in the Cortes, but they did not constitute a legislative assembly; their resolutions had not the force of law, unless sanctioned by the King and he always claimed and exercised the power to make laws without their intervention. The terms in which they formulated their requests, though they might use severe language, and the replies they received, showed the supremacy of the monarch; they asked as a favour, the King ordered or resolved.

The value of the Cortes as a means of obtaining the redress of grievances and other benefits may appear to us to have been slight, and the repetition

of their complaints show the small effect they had, but the Third Estate attached great importance to them and continually asked that they should be summoned periodically and often. Its members could only find in union the force that the nobles and clergy possessed individually by rank and wealth. King John I was requested to call the Cortes annually and consented to do so, but if a record of all the assemblies that were held has not come down to us, we may none the less be sure that the promise was not kept. In the Cortes of Torres Novas in 1438, amid the agitation about the regency, an annual convocation was actually decided upon, but not carried out. Down to 1385 we have notice of twenty-seven Cortes and from 1385 to 1580 of fifty-six; the 15th century was that in which they met most frequently. After the consolidation of the royal power under John II they met only rarely, that is to say on ten occasions in a hundred years; in those of 1525 the Third Estate asked that they should be held every ten years and John III agreed to this and even said he would call them more often, but failed to do so. Philip I summoned the Cortes at Tomar after taking possession of Portugal and promised to consult the nation on matters of importance, but during the sixty years union with Spain, the assembly only met twice. The Cortes of 1641, as we have seen, represented an ephemeral triumph of the idea of the popular origin of royal power. They were summoned on a few later occasions, for instance to alter the so-called laws of Lamego, but their days were numbered. In 1668 they compelled the Regent Pedro to make peace with Spain against his will, threatening

unless he did so to supply neither men nor money for the war, but he dissolved those of 1674 because they sought to examine and control public expenditure and would not accept the Crown they offered, because they claimed the right to dispose of it.

The last time the assembly met was in 1697. King John V excused himself from calling the Cortes and with the victory of Divine right, publicists contended that, though formerly necessary, they could now be replaced with advantage by the Secretaries of State and Councils. Their next meeting was in 1828\* to settle the succession to the throne, and it proved to be the last, because King Miguel was driven from Portugal by the Quadruple Alliance and an imitation of the French parliamentary system was established by the victorious Liberals.

Of the Councils referred to above the most important was that of State, created in 1569 by King Sebastian, which directed foreign affairs and superintended the home administration. It had similar powers to the present English Cabinet and greater than the Cortes ever possessed, because during the last half of the 17th century the sovereigns nearly always ratified the opinion of the majority. In 1657 after the death of John IV, acting as the mouthpiece of public opinion, it addressed the Queen Regent in terms remarkable for boldness. It advised her to resolve nothing privately, but to consult the Tribunals, and declared that if anyone should tell her that this mode of governing

\* The Assembly which met after the Revolution of 1820 had nothing in common with the historic Cortes.

was contrary to the royal dignity, she ought not to believe it, for the Roman Emperors, although so absolute, settled nothing themselves. Kings might divert affairs from the competent bodies, but only by their absolute power, which always sounded ill, and not by their ordinary, which resided in the Councils; moreover by doing so they broke the laws and customs of the realm which they had sworn to observe. Failing it, subjects would not recognise Kings, because the contract was reciprocal: "I will keep your laws, if you acknowledge me as King, and because your Majesty keeps them, we recognise you as such."

It is noticeable that the Queen was not advised to summon the Estates; the Councillors probably shared the view of the celebrated contemporary writer D. Francisco Manuel who declared: "Cortes are like purges in the body, which, when old humours are revolved, is sometimes left worse than before the medicine."

As Carlyle pointed out in his notable pamphlet "Shooting Niagara," a man is not necessarily the better for owning a vote, yet the paternal rule of the old Portuguese Kings has been held, by some modern writers of the Liberal school, to have been a misfortune for the country. It must be remembered, however, that without it the discoveries and the creation of an overseas empire, which gave Portugal her place in world history, would have been impossible. Only by the combination of the national resources under a single hand could a naturally undisciplined people of one and a half millions have achieved so immense an undertaking.

Englishmen are apt to regard Parliamentary

government as something sacred and not rarely they make it a fetish, but the form of rule is immaterial, so long as it secures the happiness of the people, and one system does not suit all nations equally well. Parliamentary government can only work successfully with the intelligent co-operation of the majority of citizens, but the Portuguese are not as a rule interested in political problems; while some used the vote to obtain personal or local benefits, most spurned it from indifference, or the knowledge that ministers would render it nugatory by force or fraud. The history of Portugal for the last hundred years seems to prove that Parliaments are radically unsuited to it, because while they have enjoyed almost sovereign power during this period, it has been one of perennial unrest and revolution, unknown in the preceding seven centuries. The failure of the Parliamentary regime must be mainly attributed to the fact that it is alien from the national traditions; it came as a foreign institution, forcibly imposed on a recalcitrant nation by English and French politicians and by mercenary soldiers and sailors from abroad. Portugal would have been spared much misery, if the self-evident truth that every country has a right to work out political salvation without foreign interference,—always provided it makes no attempt itself to interfere with its neighbours—had been recognised a hundred years ago. Palmerston and his Quadruple Alliance are bitter memories for our oldest ally.

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